

IN THE UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

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JOHN W. GARDNER, Secretary of Health,  
Education and Welfare,  
Appellant  
v.

PAUL E. SLOANE and ALYSE S. SLOANE,  
Appellees

---

ON APPEAL FROM THE UNITED STATES DISTRICT  
COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA

---

BRIEF AND APPENDIX FOR THE APPELLANT

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## INDEX

	<u>Page</u>
Jurisdictional statement -----	1
Statement of the case -----	2
Statutes and regulations involved -----	7
Specification of errors -----	7
Summary of Argument -----	8
Argument -----	9
In imposing deductions on a self-employed wage earner's old-age insurance benefits because of excessive earnings in the year when the claimant celebrated his 72nd birth- day, the Secretary correctly held that the earnings for the taxable year were the earnings for the entire twelve month calendar period and not only the earnings for the months prior to his 72nd birthday. -----	10
Conclusion -----	14
Certificate -----	15
Affidavit of service -----	16
Appendix -----	1a

## CITATIONS

Cases:

Udall v. Tallman, 380 U.S. 1 -----	9,14
------------------------------------	------

Statutes and Regulations:

Statutes:

Internal Revenue Code, 26 U.S.C. 441 <u>et seq.</u> -----	7
26 U.S.C. 441(b)(3) -----	8,10,12
26 U.S.C. 443 -----	4, 10

Social Security Act, 42 U.S.C. 401 <u>et seq.</u> -----	7
42 U.S.C. 402(a) -----	2
42 U.S.C. 403(b) -----	3
42 U.S.C. 403(f)(1) -----	3
42 U.S.C. 403(f)(3) -----	3
42 U.S.C. 403(f)(4)(A) -----	4
42 U.S.C. 405(g) -----	1
42 U.S.C. 411(e) -----	4,8,10,11

26 U.S.C. 6851 -----	4, 10
----------------------	-------

Regulations:

Social Security Handbook on Old-Age, Survivors  
and Disability Insurance, 2nd Ed., January  
1963, Section 1813 ----- 11, 13

Miscellaneous:

Senate Report No. 1669, 81st Cong., 2nd Sess.,  
pp. 6, 74 ----- 12, 13

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JURISDICTIONAL STATEMENT

This action was brought by the claimants-appellees in the court below, pursuant to Section 205(g) of the Social Security Act, 42 U.S.C. 405(g), to obtain judicial review of a final decision of the Secretary of Health, Education and Welfare <sup>1/</sup> (R. 1-3). The Secretary had held that deductions should be imposed against old-age social security retirement benefits due the claimant and his wife during the years 1958 through 1960, and

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<sup>1/</sup> The designation "R." refers to the portion of the Record reproduced by the Clerk of this Court. The designation "Tr." refers to the transcript of the administrative proceedings, four copies of which have been filed with the Clerk.

for the first six months of 1962 before the wage earner celebrated his seventy-second birthday because the wage earner, a self-employed attorney, had earnings in excess of the amount allowed by the statute (Tr. 14-18).

The district court upheld the Secretary's decision with respect to the years 1958 through 1960 but reversed the decision of the Secretary for the year 1962, holding that the Secretary had misinterpreted the applicable law in taking into account income received by the claimant during the entire calendar year in which he reached 72, rather than just the six months prior to his seventy-second birthday (R. 21-27). Accordingly, the court entered summary judgment on May 12, 1967, affirming the decision of the Secretary, but modifying that part requiring the plaintiffs-appellees' repayment of \$999.00 in benefits received for the first six months of 1962 (R. 28-29). On May 15, 1967, the Secretary filed notice of appeal limited to the adverse part of the district court order, i.e., the year 1962 (R. 30-31). The jurisdiction of this court is based upon 28 U.S.C. 1291.

#### STATEMENT OF THE CASE

##### 1. The Statutory Background.

Under the Social Security Act an individual is entitled to old-age insurance (retirement) benefits if he is fully insured, has attained the age of 65, and has filed application for benefits (42 U.S.C. 402(a)), (App. 1a ). However, if an

ndividual under 72 years of age continues to work and receives wages or self-employment income, his retirement benefits and those of his qualifying dependents are reduced, by deductions, depending upon the amount of his "excess earnings". (42 U.S.C. 403(b)) App. 1a ). During 1962, the year in question, the Social Security Act provided for the reduction of insurance benefits and the charging of an individual's excess earnings "to the first month of such taxable year an amount of his excess earnings equal to the sum of the payments which he and all other persons are entitled for such month" on the basis of his income and the balance of such excess earnings shall be charged "to each succeeding month in such year" (42 U.S.C. 403(f)(1)) (App. 2a-3a ). The statute then goes on to provide that "Notwithstanding the preceding provisions of this paragraph, no part of the excess earnings of an individual shall be charged to any month \* \* \* B) in which such individual was age seventy-two or over \* \* \*. Ibid.)

Specifically, 42 U.S.C. 403(f)(3) (App. 3a ) in effect in 1962, provided that an individual's excess earnings for a taxable year shall be his earnings for such year in excess of the product of "\$100 multiplied by the number of months in such year." <sup>2/</sup> Thus if the claimant had earnings of \$1,200 or less during the year, he received the full amount of his Social Security benefits. If he had earnings of over \$1,200 but not over \$1,700 he lost \$1.00 in benefits during the months of the year before he reached 72 for each two dollars he earned. For all

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<sup>2/</sup> The 1965 Amendments to the Act raised the amount to \$125. 42 U.S.C. (Supp I) 403(f)(3).

earnings over \$1,700, he lost a dollar in benefits for each dollar he earned in that year.

The Act further provides that an individual will be presumed to have been engaged in self-employment in any such month unless it is shown to the satisfaction of the Secretary that he rendered no substantial services in that particular month with respect to any trade or business, the net income of which is included in computing his net earnings from self-employment for any taxable year (42 U.S.C. 403(f)(4)(A)) (App. 3a ).

The Act defines the term "taxable year" to "have the same meaning as when used in Chapter I of Title 26" [the Internal Revenue Code of 1954] (42 U.S.C. 411(e)(App. 4a )). It expressly provides that the "taxable year of any individual shall be a calendar year unless he has a different taxable year for the purposes of the [Internal Revenue Code] in which case his taxable year for the purposes of this subchapter shall be the same as his taxable year under [the Code]." And the Internal Revenue Code provides for returns for periods of less than 12 months only in cases where (1) the taxpayer has changed his annual accounting period; (2) the taxpayer is not in existence for the entire taxable year; or (3) when the Commissioner terminates the taxable year because the tax is in jeopardy under 26 U.S.C. 68 (26 U.S.C. 443) (App. 5a ).

And the Act requires an individual entitled to benefits to report his earnings or wages for the taxable year to the Secretary before April 15 of the succeeding year. This report need not be made only for any taxable year "beginning with or

ater the month in which such individual attains the age of 72 or if benefit payments for all months in which the individual is under 72 have been suspended (42 U.S.C. 43(h)(1)(A)) (App. 3a-4a).

## 2. The Relevant Facts.

The facts are essentially undisputed.

Paul Sloane retired from his employment as an attorney in the legal department of the Pacific Gas and Electric Company in September of 1955 after attaining the age of 65 in July 1955 (Tr. 16, 98, R. 21). He applied for old-age insurance benefits in May 1956 (Tr. 98-99), and benefits were paid to him through November 1962 (Tr. 150). Alyse Sloane, his wife, received benefits on the basis of his earnings record from June 1957 through November 1962 (Tr. 102-109).

In December 1962, the Social Security Administration, on the basis of information from the Internal Revenue Service, determined that there had been an overpayment and that the claimant and his wife had received benefits to which they were not entitled because Mr. Sloane was not retired but was self-employed. Accordingly, they discontinued further payments until the amount of the overpayment would be repaid (Tr. 146-47, E. 22).

The following facts were adduced at the administrative hearing; after retiring from the Pacific Gas and Electric Company in 1955 at the age of 65, Mr. Sloane opened a private law office and practiced law full time in San Francisco (Tr. 35-36).

Mr. Sloane worked the entire year 1962 -- the year in question -- handling numerous estates (Tr. 55-56). On July 8, 1962, he became 72. During the entire year 1962, he had a total income of \$36,365.79 with expenses of \$14,707.88, or a total self-employment income of \$21,657.90 (Tr. 224, 229). He explained that these fees were earned as a result of the settlement of various large estates (Tr. 229). Mr. Sloane testified that while he could have deferred receiving the great bulk of these fees until January 1963, he settled the estates in 1962 after his 72nd birthday because he "figured it would make no difference" when he received the fees as long as he was over 72 (Tr. 59-61).

### 3. Administrative Decision and Proceedings Below.

The Secretary, through the Hearing Examiner, found that the claimants-appellee's' old-age benefits were subject to deductions for the years 1958 through 1960 and the first six months of 1962. The Hearing Examiner expressly noted the provisions of paragraph 1813 of the Social Security Handbook on old-age benefits:

Earnings for the entire year in which a person becomes entitled to benefits, he reaches the age 72, or his benefits are terminated are counted in figuring the annual earnings and this can cause loss of benefits under some conditions. (Tr. 64, 67).

The Hearing Examiner further pointed out to Mr. Sloane that "in determining whether the deductions are payable [imposed] the law says you must compute the earnings of the

entire year on an annual basis not on a month or day, but  
on the entire year." (Tr. 67).

The claimant and his wife then brought this action in  
the district court for review of the administrative decision  
(R. 1-3). On cross-motions for summary judgment, the district  
court upheld the Secretary's determination with respect to  
the years 1958-1960 but, with respect to the year 1962,  
(R. 21-24, 27) rejected the Secretary's argument that in  
determining the earnings attributable to an individual, the  
entire taxable year is to be used, rather than just the months  
prior to the wage earner's 72nd birthday. The court accordingly  
reversed the Secretary's decision requiring repayment of the money  
received in the six months of the year 1962 before the claimant  
reached his seventy-second birthday (R. 26).

#### STATUTES AND REGULATIONS INVOLVED

The relevant provisions of the Social Security Act,  
42 U.S.C. 401 et seq., Internal Revenue Code, 26 U.S.C. 441  
et seq and Regulations of the Social Security Administration  
are set forth in the appendix to this brief, infra, pp. 1a - 5a .

#### SPECIFICATION OF ERRORS

1. The district court erred in holding that in determining whether a deduction for excess earnings is to be made from a wage earner's old-age insurance benefits for the year in which he reaches his seventy-second birthday, the Secretary may take into account only earnings in the months prior to the wage earner's seventy-second birthday, and not the earnings for the entire twelve months calendar year.

2. The district court erred in remanding the case to the Secretary for recomputation of the amount of overpayment.

#### SUMMARY OF ARGUMENT

1. The Social Security Act, 42 U.S.C. 411(e), expressly incorporates the definitions of taxable year contained in the Internal Revenue Code. And under the Internal Revenue Code, 26 U.S.C. 441(b)(3), 26 U.S.C. 443, the wage earner's taxable year was the twelve month calendar year. Thus, where as in the instant case, the wage earner performed services as a self-employed lawyer throughout the year and had a taxable income of \$21,657.90 for the entire year, the district court was plainly wrong in holding that the wage earner and his wife were entitled to their old-age benefits for the first six months of the year, before he became 72, even though the wage earner was admittedly performing services and deferred receiving his income until after his seventy-second birthday.

Contrary to the district court's characterization of the statute as "ambiguous", the statute and its legislative history makes it clear that in determining what earnings are to be considered for the purpose of imposing deductions, Congress intended the "taxable year" to consist of the entire 12 months period, and the wage earner is required to make an earnings report to the Secretary for the entire year when the wage earner turns 72. 42 U.S.C. 403(h)(1)(A).

2. Indeed, assuming arguendo that the statute were ambiguous, the district court erred in rejecting the Secretary's interpretation, where as pointed out by the district court "[I]t is possible to construe it as the Administration has." (R. 26). For as pointed out in Udall v. Tallman, 380 U.S. 1, 4, 16 where, as here, an administrative interpretation of a statute is plainly reasonable, the Secretary's interpretation should not be brushed aside by the courts.

#### ARGUMENT

##### Introduction

Paul Sloane, the wage earner in this case, had a taxable income in 1962 of \$21,657.90 (Tr. 224). Although he worked the entire year as a self-employed lawyer (Tr. 36), virtually all of this income was received during the second half of the year, specifically after he had turned 72 on July 8, 1962. The single question presented on this appeal is whether, in determining his old-age benefits, for the first six months of the year, his income during the second six months must be taken into account. If so, the wage earner was admittedly subject to "excess earnings" deductions from his benefits for the January - June period. If, however, the post-July 8 income receipts are irrelevant, then (in view of the fact that he received very little income prior to July 8) no excess earnings deductions would be chargeable against his benefits for the first half of the year.

IN IMPOSING DEDUCTIONS ON A SELF-EMPLOYED WAGE EARNER'S OLD-AGE INSURANCE BENEFITS BECAUSE OF EXCESSIVE EARNINGS IN THE YEAR WHEN THE CLAIMANT CELEBRATED HIS 72ND BIRTHDAY, THE SECRETARY CORRECTLY HELD THAT THE EARNINGS FOR THE TAXABLE YEAR WERE THE EARNINGS FOR THE ENTIRE TWELVE MONTH CALENDAR PERIOD AND NOT ONLY THE EARNINGS FOR THE MONTHS PRIOR TO HIS 72ND BIRTHDAY.

For purposes of the administration of the Social Security Act (and thus the imposition of deductions from a wage earner's benefits because of excess earnings in the taxable year), 42 U.S.C. 411(e) (App. 4a        ), expressly defines the term "taxable year" to have the "same meaning" as when used in the Internal Revenue Code and that "the taxable year of any individual shall be a calendar year" unless the individual has a different taxable year under the Internal Revenue Code. And under the Internal Revenue Code, 26 U.S.C. 441(b)(3), 26 U.S.C. 443, returns can be made for periods of less than twelve months only in specific <sup>3/</sup> enumerated circumstances not applicable to the case at bar. Thus there is no question that, under the Internal Revenue Code, Mr. Sloane's taxable year was the entire twelve month calendar year of 1962, and was not to be limited to those months prior to his 72nd birthday.

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<sup>3/</sup> The Internal Revenue Code, 26 U.S.C. 443 provides that return can be made for periods of less than twelve months only in cases where (1) the taxpayer has changed his annual accounting period, (2) the taxpayer is not in existence for the entire taxable year, or (3) when the Commissioner terminates the taxable year for tax in jeopardy under 26 U.S.C. 6851. Admittedly, none of these conditions for establishing a shorter than twelve months taxable year under the Internal Revenue Code were met by Paul Sloane for the period here in question.

In line with these statutory requirements, the Social  
4/  
Security Administration's Handbook notes:

§ 1813. Earnings for the entire year in which a person becomes entitled to benefits, he reaches age 72, or his benefits are terminated are counted in figuring the annual earnings and thus can cause loss of benefits under some conditions. Thus, if a worker had earned \$800 through April and became entitled to benefits of \$100 monthly in May, and then earned \$200 a month in each of the months of May through October, his total annual earnings are \$2,000 even though he earned only \$1,200 after becoming entitled to benefits. His excess earnings, computed in accordance with § 1804 above, are \$550, to be charged against his benefits for the year. Skipping January through April, because he was not yet entitled to any benefits for those months, no benefits will be payable for May through September; he will receive a partial benefit of \$50 for October. Full benefits can be paid for November and December, since no excess earnings remain to be charged against benefits for those months. \* \* \*

There is no justifiable support for the district court's view that the Internal Revenue Code concept of taxable year was inapplicable to determinations of excess earnings under Section 403.

First as we pointed out, supra, for purposes of the administration of the Social Security Act (and thus the imposition of deductions from a wage earner's benefits because of excess earnings), 42 U.S.C. 411(e) expressly incorporates the definition

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4/ Social Security Handbook on Old-Age, Survivors and Disability Insurance, 2nd Ed., January 1963.

of taxable year contained in the Internal Revenue Code,  
26 U.S.C. 441(b)(3), 26 U.S.C. 443. Nothing in 42 U.S.C.  
403 suggests that the Internal Revenue Code taxable year is  
inapplicable in the imposition of deductions. To the contrary,  
42 U.S.C. 403(h)(1)(A) (App. 3a - 4a ) contains an affirmative  
indication that Congress intended the taxable year concept to  
apply to Section 403 determinations. That subsection expressly  
provides that, where, as here, the wage earner turns 72 in  
the middle of the year, the "taxable year" is the entire 12  
month period and the wage earner is required to make an earnings  
report to the Secretary for the entire year. It is only in the  
taxable year "beginning with or after the month in which such  
individual attained the age of 72" that no reports need be made.

Moreover, the Secretary's construction of this provision  
is supported by the legislative history. Specifically, the  
Senate and House Reports accompanying the 1950 Amendments to  
the Social Security Act, which first extended coverage to self-  
employed lawyers such as Mr. Sloane,<sup>5/</sup> provided that "benefit"  
deductions would be imposed for any month as a result of the self-  
employment of a beneficiary "only when the beneficiary both had  
substantial net earnings from self-employment in the year and  
rendered substantial services in a trade or business in that  
month." S.Rept. 1669, 81st Cong., 1st Sess., at p. 74 (App. 11a

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5/ Senate Report No. 1669, 81st Cong., p. 6.

6/ For the convenience of the Court, the pertinent pages  
of the Senate Report are reproduced in the Appendix  
to this brief.

Here Mr. Sloane admittedly practiced law full time during the first six months of 1962 (Tr. 36-37). That he allegedly had no earnings during a few of these months makes no difference. Thus, the Senate Committee report points out that "if an individual entitled to old-age insurance benefits engaged throughout the taxable year in business as a real-estate broker and earned more than [the allowable amount] for the entire year, he will suffer a deduction under section 203(b)(2) for each month of the year even though during several months of the year he may have operated at a loss through an inability to negotiate any sales in those months." Senate Rept. No. 1669, Ibid., at p. 74. And the legislative history shows further congressional awareness that even in the year when the claimant becomes entitled to benefits, or as here becomes free from statutory earnings restriction, "[g]enerally, the taxable year of an individual will be a calendar year, or a fiscal year, containing 12 months." S. Rept. 1669, Ibid., at p. 73 (App. 9a).

There is no doubt that, in view of the foregoing considerations, the Secretary was clearly justified in interpreting the statute to mean that "Earnings for the entire year in which a person \* \* \* reaches age 72 \* \* \* are counted in figuring the annual earnings and thus can cause loss of earnings under some conditions." Section 1813 of the Social Security Handbook, supra, p. 11. Indeed, as the district court itself recognized, "It is possible to construe [the law] as the Administration has" since this construction "is consistent" with the use of the income

tax returns to check the earnings of claimants during a taxable year" (R. 26). In these circumstances, where the district court itself recognized that the administrative interpretation was reasonable, the district court, we submit, should not have substituted its own interpretation for that of the administrator's. As pointed out in Udall v. Tallman, 380 U.S. 1, 4, 16 even where an administrative "interpretation may not be the only one permitted by the language of the order, but it is quite clearly a reasonable interpretation, courts may therefore respect it." 380 U.S. at 4.

#### CONCLUSION

For the foregoing reasons, we respectfully submit that that part of the district court judgment adverse to the Secretary should be reversed and the Secretary's determination, requiring repayment of the excess benefits received in 1962, should be reinstated.

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SEPTEMBER 1967.

CERTIFICATE

I hereby certify that, in connection with the preparation of this brief, I have examined Rules 18, 19 and 39 of the United States Court of Appeals for the Ninth Circuit, and that, in my opinion, the foregoing brief is in full compliance with those rules.

*Jack H. Weiner*

JACK H. WEINER,  
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AFFIDAVIT OF SERVICE

DISTRICT OF COLUMBIA      }  
CITY OF WASHINGTON      }      ss.

JACK H. WEINER, being duly sworn, deposes and says:

That on September 29 , 1967, he caused three copies of the foregoing brief and appendix for the appellant to be served upon appellee by placing them in the United States Mail, air mail, postage prepaid, in an envelope addressed to counsel as follows:

Paul E. Sloane, Esquire  
2 Pine Street, Suite 201  
San Francisco, California 94111

*Jack H. Weiner*  
\_\_\_\_\_  
JACK H. WEINER,  
Attorney,  
Department of Justice,  
Washington, D.C. 20530.

Subscribed and sworn to before  
me this    29th   day of September, 1967.

[Seal]

*Angeline Johns*  
NOTARY PUBLIC

My Commission expires on April 14, 1972.

A P P E N D I X



## STATUTES

The Social Security Act, 42 U.S.C. 402 et seq., in effect at the time in controversy, provides in pertinent part:

### § 402 Old-age and survivors insurance benefit payments -- Old-age insurance benefits

(a) Every individual who --

(1) is a fully insured individual (as defined in section 414(a) of this title),

(2) has attained age 62, and

(3) has filed application for old-age insurance benefits or was entitled to disability insurance benefits for the month preceding the month in which he attained the age of 65,

shall be entitled to an old-age insurance benefit for each month, beginning with the first month after August 1950 inwhich such individual becomes so entitled to such insurance benefits and ending with the month preceding the month in which he dies. Except as provided in subsection (q) of this section, such individual's old-age insurance benefit for any month shall be equal to his primary insurance amount (as defined in section 415(a) of this title) for such month.

### § 403 Reduction of insurance benefits -- Maximum benefits

(b) Deductions on account of work.

Deductions, in such amounts and at such time or times as the Secretary shall determine, shall be made from any payment or payments under this sub-chapter to which an individual is entitled, and from any payment or payments to which any other persons are entitled on the basis of such individual's wages and self-employment income, until the total of such deductions equals --

(1) such individual's benefit or benefits under section 402 of this title for any month, and

(2) if such individual was entitled to old-age insurance benefits under section 402(a) of this title for such month, the benefit or benefits of all other persons for such month under section 402 of this title based on such individual's wages and self-employment income,

if for such month he is charged with excess earnings, under the provisions of subsection (f) of this section, equal to the total of benefits referred to in clauses (1) and (2). If the excess earnings so charged are less than such total of benefits, such deductions with respect to such month shall be equal only to the amount of such excess earnings.

\* \* \*

(f) Months to which earnings are charged.

For purposes of subsection (b) of this section --

(1) The amount of an individual's excess earnings (as defined in paragraph (3)) shall be charged to months as follows: There shall be charged to the first months of such taxable year an amount of his excess earnings equal to the sum of the payments to which he and all other persons are entitled for such month under section 402 of this title on the basis of his wages and self-employment income (or the total of his excess earnings if such excess earnings are less than such sum), and the balance, if any, of such excess earnings shall be charged to each succeeding month in such year to the extent, in the case of each such month, of the sum of the payments to which such individual and all other persons are entitled for such month under section 402 of this title on the basis of his wages and self-employment income, until the total of such excess has been so charged. Where an individual is entitled to benefits under section 402(a) of this title and other persons are entitled to benefits under section 402(b), (c), or (d) of this title on the basis of the wages and self-employment income of such individual, the excess earnings of such individual for any taxable year shall be charged in accordance with the provisions of this subsection before the excess earnings of such persons for a taxable year are charged to months in such individual's taxable year. Notwithstanding the preceding provisions of this paragraph, no part of the excess earnings of an individual shall be charged to any month (A) for which such individual was not entitled to a benefit

under this subchapter, (B) in which such individual was age seventy-two or over, (C) in which such individual, if a child entitled to child's insurance benefits, has attained the age of 18, or (D) in which such individual did not engage in self-employment and did not render services for wages (determined as provided in paragraph (5) of this subsection) of more than \$100

\* \* \*

(3) For purposes of paragraph (1) and subsection (h) of this section, an individual's excess earnings for a taxable year shall be his earnings for such year in excess of the product of \$100 multiplied by the number of months in such year, except that of the first \$500 of such excess (or all of such excess if it is less than \$500), an amount equal to one-half thereof shall not be included. The excess earnings as derived under the preceding sentence, if not a multiple of \$1, shall be reduced to the next lower multiple of \$1.

(4) For purposes of clause (D) of paragraph (1) --

(A) An individual will be presumed, with respect to any month, to have been engaged in self-employment in such month until it is shown to the satisfaction of the Secretary that such individual rendered no substantial services in such month with respect to any trade or business the net income or loss of which is includable in computing (as provided in paragraph (5) of this subsection) his net earnings or net loss from self-employment for any taxable year. The Secretary shall by regulations prescribe the methods and criteria for determining whether or not an individual has rendered substantial services with respect to any trade or business.

\* \* \*

(h)(1)(A) Report of earnings to Secretary.

If an individual is entitled to any monthly insurance benefit under section 402 of this title

during any taxable year in which he has earnings or wages, as computed pursuant to paragraph (5) of subsection (f) of this section, in excess of the product of \$100 times the number of months in such year, such individual (or the individual who is in receipt of such benefit on his behalf) shall make a report to the Secretary of his earnings (or wages) for such taxable year. Such report shall be made on or before the fifteenth day of the fourth month following the close of such year and shall contain such information and be made in such manner as the Secretary may by regulations prescribe. Such report need not be made for any taxable year (i) beginning with or after the month in which such individual attained the age of 72, or (ii) if benefit payments for all months (in such taxable year) in which such individual is under age 72 have been suspended under the provisions of the first sentence of paragraph (3) of this subsection.

\* \* \*

#### § 411 Definitions relating to self-employment

\* \* \*

##### (e) Taxable year.

The term "taxable year" shall have the same meaning as when used in chapter 1 of Title 26; and the taxable year of any individual shall be a calendar year unless he has a different taxable year for the purposes of chapter 1 of Title 26, in which case his taxable year for the purposes of this subchapter shall be the same as his taxable year under chapter 1 of Title 26.

The Internal Revenue Code, 26 U.S.C. provides in pertinent part:

#### § 441 Period for computation of taxable income

\* \* \*

##### (b) Taxable year.

For purposes of this subtitle, the term "taxable year" means --

(1) The taxpayer's annual accounting period, if it is a calendar year or a fiscal year;

(2) The calendar year, if subsection (g) applies; or

(3) The period for which the return is made, if a return is made for a period of less than 12 months.

\* \* \*

§ 443 Returns for a period of less than 12 months.

(a) Returns for short period

A return for a period of less than 12 months (referred to in this section as "short period") shall be made under any of the following circumstances.

(1) Change of annual accounting period.

When the taxpayer, with the approval of the Secretary or his delegate, changes his annual accounting period. In such a case, the return shall be made for the short period beginning on the day after the close of the former taxable year and ending at the close of the day before the day designated as the first day of the new taxable year.

(2) Taxpayer not in existence for entire taxable year.

When the taxpayer is in existence during only part of what would otherwise be his taxable year.

(3) Termination of taxable year for jeopardy.

When the Secretary or his delegate terminates the taxpayer's taxable year under section 6851 (relating to tax in jeopardy).

#### MAXIMUM BENEFITS

[70]Section 102 of the bill replaces subsections (a), (b), and (c) of section 203 of the present Social Security Act with a new section 203(a). The new subsection liberalizes the maximum amount of monthly benefits payable, for months after the first calendar month following the month in which the bill is enacted. Under the House bill, the new provisions would have been effective for months after 1949.

Under existing law, the benefits payable on the basis of an individual's wages, if they exceed \$20 for any month, are reduced for such month to \$85, to twice his primary benefit, or to 80 percent of his average monthly wage, whichever is smallest, but not below \$20. The bill increases the figure of \$85 to \$150, eliminates the limitation of twice the primary insurance benefit, and raises the figure of \$20, below which the total of benefits may not be reduced, to \$40. This result was accomplished in the House bill by establishing a minimum average monthly wage of \$50, so that application of the 80-percent maximum could not reduce family benefits below \$40. Your committee has eliminated the provision for a minimum average monthly wage and it thus becomes necessary to restore to the bill a specific dollar minimum below which the operation of the maximum of 80 percent of the average monthly wage will not reduce benefits.

Thus subsection further provides that when the beneficiary group includes children who would be entitled to child's benefits on the basis of more than one wage record (but for the provisions concerning simultaneous entitlement to benefits in section 202(k)(2)(A)), the total benefits payable shall be reduced to the lesser of \$150 or 80 percent of the sum of the average monthly wages of all the insured individuals on whose wage records such benefits would otherwise be payable, but in no case to less than \$40. This provision complements the provisions on simultaneous entitlement to benefits in paragraphs (1) and (2)(A) of section 202(k) of the Social Security Act as amended by the bill. Under the simultaneous entitlement provisions all children entitled to child's insurance benefits on the same two or more wage records would be restricted to benefits based on only the one of such records which produces the highest primary insurance amount. To prevent this restriction from unduly limiting the total amount payable to children in the same family, the above provision for combining all the wage records, on which any of the family are entitled, for determining

\* House Report No. 1300, 81st Cong., 1st Sess., pp. 62-65 is for the most part a repetition of the Senate Report.

the maximum benefit was inserted. It did not appear in the bill as passed by the House. It is, however, an essential [71] companion to the changes made in existing law (and in the House bill) by paragraphs (1) and (2)(A) of section 202(k).

Under the present law, the total of the family benefits for a month is reduced to the maximum permitted by section 203(a) prior to any deductions on account of the occurrence of any event specified in the law (such as work for wages in excess of the maximum permitted). Section 203(a) as amended by the bill reverses this procedure and provides that the reduction in the total of benefits for a month is to be made after the deductions. As a result, larger family benefits will be payable in many cases. For example, if a worker with a primary insurance amount of \$40 and an average monthly wage of \$80 dies leaving a widow and two children, all of whom have filed claims and are entitled to benefits, the maximum of the benefits payable to these survivors for any month is \$64 (80 percent of \$80). Prior to the application of the maximum, the widow would be entitled to a benefit of \$30 and each child to a benefit of \$25 (three-fourths of the primary insurance amount for the widow and one-half of such amount for each child, with an additional one-fourth of such amount divided equally between the two children). Under the procedure in existing law, these amounts would be reduced to \$24 for the widow and \$20 for each child (so as to total \$64). The reduction in these amounts applies even though one beneficiary, such as the widow, suffers a loss of her benefit because she earns more than the permitted amount for services in covered employment. Under section 203(a) as amended by the bill, the maximum would be applied for any month after any deductions for that month so that, where the widow works as in the above case, each child would receive the full \$25.

The bill eliminates as unnecessary the present provision of section 203(b) that benefits payable on any wage record shall not be less than \$10 per month. Since the bill establishes a minimum primary insurance amount of \$20 in any case where the average monthly wage is less than \$34, the minimum benefit payable on such wage record is \$10 if the only benefit payable is a parent's benefit and \$15 in the case of any other single survivor benefit payable on such wage record; in the case where the average monthly wage is \$34 or more, corresponding figures are \$12.50 and \$18.75, respectively. The provision of the existing section 203(c) under which each benefit, except the old-age insurance benefit, is proportionately decreased when there is a decrease in the total family benefits is transferred by the bill (as was true in the case of the House bill) to section 203(a).

Except for the combination of wage records for purposes of the family maximum in cases of children entitled to more than one wage record, which did not appear in the bill as passed by the House, and for the change in effective dates, the bill as reported by your committee and the House bill are the same on this matter.

#### DEDUCTIONS FROM BENEFITS

Section 103 of the bill revises rather extensively the provisions of the present Social Security Act relating to deductions from benefits. Subsections (d), (e), (f), (g), and (h) of section 203 of the present act are replaced by subsections (b), (c), (d), (e), (f), (g), (h), (i), and (j) of section 203 of the amended act.

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##### [72] Deductions from dependents' benefits because of work by old-age beneficiary

Section 203(c) provides for the making of deductions from dependents' benefits for any month in which the old-age beneficiary suffers a deduction with respect to his own benefit. Paragraph (1) of this subsection, which is similar to existing law, provides that deductions from a wife's, husband's, or child's benefits are to be made for months in which the old-age beneficiary suffers a deduction under section 203(b)(1) (which relates to the rendition of services for wages of more than \$50). Paragraph (2) adds a comparable provision so as to deduct a wife's, husband's, or child's benefit for months in which the old-age beneficiary suffers a deduction under section 203(b)(2) (which relates to the charging to a month of net earnings from self-employment of more than \$50).

##### Occurrence of more than one event

The first sentence of section 203(d), which is similar to present law, provides that if more than one of the events specified in subsections (b) and (c) of section 203 occurs in any month, which would occasion deductions equal to a benefit for such month, only an amount equal to such benefit is to be deducted. The second sentence provides that the charging of net earnings from self-employment to any month shall be treated as an event occurring in the month to which such net earnings are charged.

##### Months to which net earnings from self-employment are charged

Section 203(e) provides the method for charging net earnings from self-employment to particular months of the taxable year for the purposes of determining the deductions required under the provisions of sections 203(b)(2) and 203(c)(2).

Paragraph (1) provides that if an individual's net earnings from self-employment for the taxable year are not more than the product of \$50 times the number of months in such year, no month in such year is to be charged with more than \$50 of net earnings from self-employment. Thus, if an individual has net earnings from self-employment of less than \$600 (for a taxable year of 12 months) no deduction would be imposed under section 203(b)(2) or 203(c)(2) even though all of the net earnings from self-employment may have been earned during a period of a few months in such year at a rate in excess of \$50 per month.

Paragraph (2) provides the method for determining the months of a taxable year to be charged with net earnings from self-employment in the case of an individual whose net earnings from self-employment for his taxable year exceed the product of \$50 times the number of months of such year. In this case, each month of the year is first to be charged with \$50 of net earnings from self-employment, then the amount of net earnings in excess of the produce is to be charged in units of \$50, beginning with the last month of the taxable year and progressing toward the first month of the taxable year. The paragraph provides further that no part of the excess net earnings from self-employment is to be charged to any month in which the individual was not entitled to a benefit under title II; in which an event described in paragraph (1), (3), or (4) of section 203(b) occurred; in which the individual was age 75 or over; or in which the individual did not engage in self-employment.

In connection with the charging of the excess, it should be noted that, in the case of an excess amount of net earnings which is not divisible by \$50, it is possible to charge a unit of excess which is less than \$50. For example, an individual who has a full 12-month taxable year and has net earnings from self-employment of \$651 would have two units of excess net earnings from self-employment, one of \$50 and one of \$1, and would thus be potentially subject to deductions for 2 months of the year.

Generally, the taxable year of an individual will be a calendar year, or a fiscal year, containing 12 months. The most common case of a [74] taxable year of less than 12 months will occur by reason of the death of a beneficiary. If, for example, a beneficiary having a taxable year which is a calendar year should die on June 2, his taxable year for the year of his death would begin on January 1 and end on June 2. If his net earnings from self-employment for the short taxable year are not more than \$300 (\$50 times 6 months), no month in such taxable year would be charged with more than \$50. If his net earnings from self-employment for such year exceed \$300, paragraph (2) of subsection (e) would be applicable in determining whether deductions from benefits are to be made.

The months to which the excess net earnings from self-employment may not be charged include those during which the individual performed services for wages of more than \$50, and those during which an individual under retirement age drawing benefits as a widow or former wife divorced did not have a child in her care. These provisions prevent the charging of the excess to months for which a deduction has already been imposed. The excess net earnings from self-employment are not to be charged to months during which the beneficiary was age 75 or over, because no deductions are imposed for such months. These provisions and the provision that the excess net earnings from self-employment may not be charged to months during which the individual was not entitled to benefits under this title prevent the dissipation of the excess net earnings from self-employment through charging them to months for which deductions may not be imposed.

It should be noted that a deduction for a particular month may be imposed under section 203(b)(2) by reason of an individual's net earnings from self-employment for the taxable year even though the individual, as a matter of fact, may not have earned \$50 from his trade or business in that particular month. For example, if an individual entitled to old-age insurance benefits engaged throughout the taxable year in business as a real-estate broker and earned more than \$1,150 for the entire year, he will suffer a deduction under section 203(b)(2) for each month of the year even though during several months of the year he may have operated at a loss through an inability to negotiate any sales in those months.

The following example will illustrate the charging to months of net earnings from self-employment for the purposes of paragraph (2) of section 203(e). Beneficiary X, who was entitled to old-age insurance benefits during the entire year and was under 72 years of age, owned and actively operated a fruit stand during the entire year. His net earnings from the business amounted to \$740. During the month of December he worked a few hours a day as an employee at a store in connection with the Christmas trade, and received wages therefor in excess of \$50. Under paragraph (2), each month of the year would be charged with \$50, and the excess (\$140) would be charged as follows: \$50 to November, \$50 to October, and \$40 to September. The month of December, for which a deduction would be imposed under section 203(b)(1) by reason of wages earned in excess of \$50, would not be charged with any part of the \$140 excess. Beneficiary X, therefore, would suffer deductions under section 203(b)(2) for the months of September, October, and November, since more than \$50 of net earnings from self-employment is charged to each of those months.

[75] The individual is to be given an opportunity to show that he did not render substantial services with respect to any trade or business during certain months of the year. In that case, the excess net earnings from self-employment are not to be charged to those months but are to be charged to any other months during which he did render substantial services, and to which the charging of the excess is not prohibited by paragraph (2). Thus, benefit deductions would be imposed for any month, as a result of the self-employment of a beneficiary, only when the beneficiary both had substantial net earnings from self-employment in the year and rendered substantial services in a trade or business in that month.

Paragraph (3)(A) defines the term "last month of such taxable year" as the last calendar month of the taxable year to which the charging of net earnings from self-employment in excess of the exempt amount is not prohibited under paragraph (2). An application of the function of paragraph (3)(A) is shown by the following example: John, who attained 18 years of age in July 1960, was entitled to child's insurance benefits for the months of January through June of that year. In May he started a radio repair business, and from May through December he had net earnings of \$900. In applying paragraph (2), each month of the entire year would be charged with \$50 of the net earnings and the excess (\$300) would be charged as follows: \$50 to June, and \$50 to May; the remainder amounting to \$200 would be disregarded (in any event, it could be charted only to May and June and would then have no effect since the charging already done would result in no benefits being paid for those months anyhow). The month of June is considered as the last month of the taxable year, for the purposes of paragraph (2), since John was not entitled to child's insurance benefits for months after June. No part of the \$300 excess would be charged to months prior to May, since John was not engaged in self-employment for any months prior to May.

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